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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/976,146	10/15/2001	Andre Marton	P67198US0	9291

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EXAMINER

YEUNG, GEORGE CHAN PUI

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 02/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/976,146

Applicant(s)

MARTON, ANDRE

Examiner

George C Yeung

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 ~~is~~/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-28 ~~is~~/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 01/30/2002.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

Claims 1-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention for the following reasons:

1. The term "Use of" recited in claims 1-5, 8, 10, 11, 14, 15 and 18-25 are improper and indefinite. The mere claiming of "use" in these claims is incomplete and therefore indefinite as to the method steps necessary to carry out the "use". A "use" claim must be written in the form of a method claim.
2. There is no antecedent basis for "the alkali metals" as recited in claims 1 and 5, lines 2 and 4, respectively.
3. The phrase "such as" recited in claims 1 and 26, lines 4 and 1, respectively, is indefinite because it is unclear whether the limitation following the phrase is part of the claimed invention.
4. The limitations "is sliced", "is cooled" and "is immersed" recited in claim 26 are improper since they fail to impart positive manipulative steps to the process claim. The change of these limitations to --slicing--, --cooling--, and --immersing-- would obviate this rejection.
5. The term "the food" recited in claim 26, lines 2 and 3, should be changed to read --the foods-- in order to be consistent with "foods" set forth in the preamble of claim 26.

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6. There is also no antecedent basis for "the cut food product" as recited in claim 28, line 3.

7. Claim 26 is improper in the recitation of "according to claim 5" because claim 26 is not a dependent claim. Note that an independent claim should be complete in itself and not depend on another claim for a complete understanding.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4-6, 8, 9, 18, 19, 26 and 27 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Cipolletti et al [Journal of Food Science, (1977), 42 (4) 911-916].

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cipolletti et al [Journal of Food Science, (1977), 42 (4) 911-916] in view of Nambu. Cipolletti et al fail to disclose the use of acetone as a coolant for cooling foods. However, Nambu teaches that ethyl alcohol and acetone are known freezing-point depressing agents for use in making a cooling medium (see especially column 10, lines 28-61). Accordingly, it would have been obvious to substitute the acetone of Nambu for the ethanol in Cipolletti et al since it is a mere substitution of one known freezing-point depressing agent for another in the absence of any new or unexpected results.

Claims 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cipolletti et al [Journal of Food Science, (1977), 42 (4) 911-916] in view of Orre (EP 0290666 B1). It would have been obvious to provide the coolant of Cipolletti et al with ethanol in a range of 50 to 90% by weight since Orre shows the conventional expedient of freezing foodstuffs with a deep-freezing solution containing 35 to 100% by weight of ethanol. Moreover, it does not appear that the claimed use of between 50% and 90% by weight of alcohol set forth in claims 10-13 is critical in view of page 4, lines 9-10 of the instant specification where it discloses "[p]referably the coolant contains between 50% and 90%, more preferably about 70% of alcohol (based on the total weight)" (emphasis added). Preferred limitations, without more, are not critical. See In re Rauch, 156 USPQ 502.

Claims 14-17 and 20-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cipolletti et al [Journal of Food Science, (1977), 42 (4) 911-916] in view of Borup et al (WO 99/21429). It would have been obvious to provide the coolant of Cipolletti et al with salt in a range of 0.5% to 10.0% by weight since Borup et al show the conventional expedient of chilling meat with a coolant containing 2 to 15% by weight of salt. With regard to claims 20-25, it would have been obvious to provide the coolant of Cipolletti et al with a flavoring material since it is an obvious matter of expediency depending upon the desired taste of the final food product.

Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cipolletti et al [Journal of Food Science, (1977), 42 (4) 911-916] in view of Sundara. It would have been obvious to package the frozen food product of Cipolletti et al in plastic sheeting since Sundara shows the conventional expedient of packaging frozen food product into suitable plastic containers under vacuum.

Translation Requirement

Applicant mentioned that English translation is attached to the Information Disclosure Statement filed on January 30, 2002 (see page 1, last line, of the Statement). However, no copy of English translation can be found attached to this Statement. Accordingly, the non-English language documents AM, AN and AR have not been considered by the Examiner. In response to this Office action, applicant is requested to submit the English translation so that it can be evaluated by the Examiner.

Conclusion

Any inquiry concerning this communication from the examiner should be directed to Examiner George C. Yeung whose telephone number is (571) 272-1412. The examiner can generally be reached on Monday-Friday from 10:30 a.m. to 7:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1201.

G.C. Yeung/dh
February 17, 2004



**GEORGE C. YEUNG
PRIMARY EXAMINER**